(4)

No. 95-1402

Supreme Court, U. S.
FILED
JUN 13 1996
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1995

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

ESTATE OF OTIS C. HUBERT, DECEASED,
C & S SOVERAN TRUST COMPANY (GEORGIA) N.A.,
A NATIONAL BANKING ASSOCIATION, CO-EXECUTOR

**On Writ of Certiorari to the
United States Court of Appeals
for the Eighth Circuit**

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED MARCH 1, 1996
CERTIORARI GRANTED APRIL 29, 1996

79pp

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UNITED STATES TAX COURT

Docket No. 22333-90

ESTATE OF OTIS C. HUBERT, DECEASED,
C&S/SOVERAN TRUST COMPANY (GEORGIA), N.A.,
A NATIONAL BANKING ASSOCIATION, CO-EXECUTOR

v.

COMMISSIONER OF INTERNAL REVENUE

DOCKET ENTRIES

DATE	FILINGS AND PROCEEDINGS
10/05/90	PETITION Filed: Fee Paid
10/05/90	DESIGNATION of Trial at Atlanta, GA
11/20/91	ANSWER (C/S 11/15/90).
05/24/91	NOTICE of Trial on 1028/91 at Atlanta, GA.
05/24/91	STANDING PRE-TRIAL ORDER attached to Notice of Tiral
08/16/91	REQUEST FOR ADMISSIONS by Petr. (C/S 08/14/91)
09/09/91	MOTION by resp. for protective order. C/S
09/09/91	MOTION by resp. to continue trial generally. C/S
09/11/91	ORDER Resp. mot. for protective order is Gr.
09/11/91	ORDER Petr. by 10-4-91 file response to mot. to continue.

DATE	FILINGS AND PROCEEDINGS
09/19/91	MOTION by petr. to reconsider Order dtd. 9/11/91 C/S w/Exh.
09/27/91	ORDER parties file joint status report by 10-11-91. Mot for recons. is gr. Order dtd. 9-11-91 granting mot for protective order is vacated. Motion for protective order is taken under advisement.
10/04/91	OBJECTION by Petr. to Mot. to Continue. C/S
10/11/91	REPORT (JOINT) filed.
10/23/91	MOTION by petr. to substitute fiduciaries & change caption. (N. Obj.) C/S
10/23/91	MOTION by petr. to Amend Petition. (Am. to Pet. Ld) C/S
10/24/91	MOTION by petr. for partial summary judgement. w/Ex., Affidavits & Memo. C/S
10/25/91	ORDER mot. to substitute Gr.; caption amended.
10/25/91	ORDER mot. to amend pet. Gr.
10/25/91	AMENDMENT TO PETITION
10/25/91	ORDER set 10/28/91 Atlanta, GA on mot. for partial summ. judg.
10/28/91	HEARING before Judge Clapp at Atlanta, GA Also called 11-4. Mot. filed 9/9—See Order Mot. filed 10/24—Dn. JURISDICTION RETAINED, JUDGE CLAPP
11/04/91	ORDER mot. to cont. Gr. in that Parties by 12-4-91 submit dec. docu., submit case fully stipulated or file a stip. of settled issues.
11/07/91	ANSWER TO AMENDMENT TO PETITION. (Served Per Judge)
11/29/91	TRANSCRIPT of 10-28-91 rec'd.
11/29/91	TRANSCRIPT of 11-4-91 rec'd.

DATE	FILINGS AND PROCEEDINGS
12/19/91	STIPULATION of Agreed Issues.
12/19/91	STIPULATION of Facts w/Exs.
12/19/91	JT. MOTION to submit case under Rule 122.
12/19/91	JT. MOTION to sever issue from Rule 122 proceeding. (Per Judge)
02/26/92	ORDER that case is submitted to Judge Clapp. Jt. mot to submit case Gr. Orig. Brfs. due 3/3/92. R. Brfs. due 4/22/92. Action on Jt. mot. to sever issue is deferred.
03/02/92	BRIEF for resp.
03/04/92	BRIEF for petr. C/S (Leave Gr)
04/22/92	REPLY BRIEF for resp.
04/23/92	MOTION by petr. to file Brief. (Brief Ld)
04/28/92	BRIEF for petr.
10/19/93	ORDER Resp. mot. for protective order & the joint mot. to sever issue are deemed moot.
10/19/93	MEMORANDUM OPINION, Judge Clapp T.C. Memo. 1993-482 (Opinion rendered on charitable deduction issue.)
10/19/93	T.C. OPINION, Judge Clapp 101 T.C. No. 22 (Decision will be entered under Rule 155)
10/27/93	ENTRY OF APPEARANCE by David W. Seigel.
12/10/93	AGREED COMPUTATION
12/10/93	SETTLEMENT STIPULATION
12/14/93	DECISION ENTERED, Judge Clapp

DATE	FILINGS AND PROCEEDINGS
	APPELLATE PROCEEDINGS
03/09/94	NOTICE OF APPEAL by resp. to U.S.C.A., 11th Cir.
03/10/94	NOTICE of Filing with copy of notice of appeal mailed to counsel of record for petrs.
03/10/94	NOTICE of assembling & date for transmission of record.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 94-8287

ESTATE OF OTIS C. HUBERT, DECEASED,
C&S SOVERAN TRUST COMPANY (GEORGIA), N.A.,
A NATIONAL BANKING ASSOCIATION, CO-EXECUTOR,
PETITIONER-APPELLEE

versus

COMMISSIONER OF INTERNAL REVEUNE,
RESPONDENT-APPELLANT

DOCKET ENTRIES

DATE	PROCEEDINGS
5/11/94	Appellate Docketing Statement
3/18/94	Staff Atty Jurisdiction IRS
3/24/94	Probable Jurisdiction Noted
4/14/94	Certified List
4/14/94	ROA (# Vols. 3)
4/20/94	Briefing Notice Issued
7/5/94	Brief for Appellant
7/5/94	Record Excerpts
8/9/94	Brief for Appellee
9/26/94	Reply Brief for Appellant
2/28/95	Supp. Authority-Apt

DATE	PROCEEDINGS
5/27/94	Apt Brief
8/19/94	Reply Brief
11/07/95	Flg. Appellee's motion for permission to file response to appellant's petition for rehearing with suggestion for rehearing en banc and Appellee's response to appellant's petition for rehearing with suggestion for rehearing en banc. lot COURT—11-08-95.lot
11/14/95	Flg. ORDER: The appellee's motion for permission to file response to appellant's petition for rehearing is GRANTED. JFD. lot
1/5/95	Argument Scheduled for 2/28/95 in ATLANTA #339
2/28/95	Case Argued—By Apt X By Ape X
9/12/95	Opinion Issued
9/12/95	Judgment Entered
12/19/95	Judgment & Opinion Issued to Clerk as Mandate
12/19/95	Record on Appeal Returned to Clerk (3 Vols.)
10/27/95	Petition for Rehearing to court 10-30-95
12/5/95	Order Denying Rehearing
3/07/96	Notice of Flg. Cert. on 3-1-96
11/08/95	Jonathan Cohen, DOJ, does not oppose motion to respond to PFR en banc. lot
11/14/95	Mot-2 for order on allowing response to Petition for Rehearing. lot
12/5/95	REHG-1 for order denying PFR. lot

[Filed Oct. 5, 1990]

UNITED STATES TAX COURT

Docket No. 22333-90

ESTATE OF OTIS C. HUBERT DECEASED; CITIZENS & SOUTHERN TRUST COMPANY (GEORGIA) N.A., a national banking association, Temporary Administrator and Nominated Co-Executor, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

PETITION

PETITIONER HEREBY PETITIONS this Court for a redetermination of the deficiencies set forth by the Commissioner of Internal Revenue in his Notice of Deficiency dated August 31, 1990, and, as the basis for its case, alleges as follows:

1. Petitioner, a national banking association with its principal places of business and principal office located in Fulton County, City of Atlanta, Georgia whose mailing address is P.O. Box 12448, Atlanta, Georgia 30355, is the Temporary Administrator of the Estate of Otis C. Hubert, Deceased, having received Temporary Letters of Administration on August 15, 1986, by the Judge of the Cobb County, Georgia Probate Court. Otis C. Hubert (the "Deceased") died on June 2, 1986, being a legal resident on that date of the City of Marietta, Cobb County, Georgia. Decedent's Social Security Number was 252-05-1011. Form 706, the United States Estate Tax

Return (the "Estate Tax Return") was filed by Petitioner on or about September 2, 1987 with the Internal Revenue Service Center in Chamblee, Georgia.

2. The Notice of Deficiency, a copy of which is attached hereto and marked "Exhibit A", was mailed to Petitioner on or about August 31, 1990, and was issued by the office of the Internal Revenue Service in Atlanta, Georgia.

3. The deficiency determined by the Commissioner is in estate tax in a total amount of $14,052,146.00, all of which is in dispute.

4. The determination of tax set forth in Respondent's statutory notice is based upon the following errors:

A. In determining that a deficiency in estate taxes is due and owing in any amount.

B. In determining that the Estate is not entitled to the deductions in the amount of $12,650,592.00 claimed on Schedule M.

C. In determining that the Estate is not entitled to the charitable deductions claimed with regard to the bequests to the Redfort C. Trammell Subtrust and Rolland Cornelius, Jr. Subtrusts, which were reported on Schedule O of the Estate Tax Return as charitable bequests in the amount of $100,000.00, each.

D. In determining that the gross estate should not be reduced by the $12,502,655.00 reported for the bequest to the O. H. Hubert Charitable Trust, identified on line 6 of Schedule O of the Estate Tax Return and for which the estate claimed a charitable deduction.

E. In failing to recognize added costs of administration and other deductible expenses.

5. The facts supporting Petitioner's case are, among others, as follows:

A. Petitioner owes no deficiencies in estate tax.

B. Otis C. Hubert ("Mr. Hubert"), a resident of the city of Marietta, Cobb County, Georgia, died on June 2, 1986 leaving a substantial estate.

C. At the time of Mr. Hubert's death, the most recent wills and codicils purportedly executed by Mr. Hubert were as follows:

DATE OF EXECUTION	DOCUMENT
December 2, 1975	1975 Last Will and Testament ("1975 Will")
August 5, 1977	First 1977 Last Will and Testament ("First 1977 Will")
November 7, 1977	Second 1977 Last Will and Testament ("Second 1977 Will")
December 29, 1977	First Codicil to Second 1977 Will
October 27, 1978	Second Codicil to Second 1977 Will
September 18, 1977	Third Codicil to Second 1977 Will
May 15, 1981	Fourth Codicil to Second 1977 Will
January 7, 1982	Last Will and Testament ("1982 Will")
February 4, 1982	First Codicil to 1982 Will
February 19, 1982	Second Codicil to 1982 Will
June 8, 1983	Third Codicil to 1982 Will

D. A dispute arose before Mr. Hubert's death between Mr. Hubert and his nephew, Mr. Robert H. Owen ("Mr. Owen");

E. Mr. Owen is the author of certain of the Codicils to the 1977 Will pertaining to religious beneficiaries, the 1982 Will, and the three Codicils to the 1982 Will [(including the Second Codicil which struck the general power of appointment previously granted decedent's spouse Ruth S. Hubert

("Mrs. Hubert")], granted in every prior Will and Codicil executed by Mr. Hubert);

F. On July 3, 1986, Citizens and Southern Trust Company (Georgia), N.A. ("C&S"), as successor by affiliate transfer to the Citizens and Southern National Bank, filed a petition with the Probate Court of Cobb County, Georgia to probate the 1982 Will and its three Codicils in common form, there being no similar application by the other named Co-Executor, Mrs. Hubert;

G. A dispute arose shortly after Mr. Hubert's death between various members of Mr. Hubert's immediate family; namely, Mrs. Hubert, Richard N. Hubert ("Richard": (Decedent's son), Marilyn Hubert Kemper ("Marilyn" :a daughter of the Decedent), Judith Hubert Manning ("Judith": (second daughter), and Deborah Hubert Jones ("Deborah": (another daughter) (collectively the "Hubert Family"), and Mr. Hubert's nephew, Mr. Owen, with respect to the contentions on the part of the Hubert Family that Mr. Owen had unduly influenced Mr. Hubert to the benefit of himself and religious charities Mr. Owen favored to the detriment of Mrs. Hubert, and the contentions of Mr. Owen that the 1982 Will and its three Codicils represented Mr. Hubert's true intentions with respect to the charities, Mrs. Hubert and Mr. Owen despite the alleged attempts by the Hubert Family to prejudice Mr. Owen and the charities;

H. On July 18, 1986, as a result of this dispute, Mr. Owen filed, in his role as successor Co-Executor and as a creditor of the Estate, a petition with the Cobb County Probate Court to probate in common form the 1982 Will and its three Codicils he had drawn;

I. An argument rose later that same day between Mr. Hubert's son, Richard, and Mr. Owen regarding

Mr. Owen's activities with respect to the Will and Mrs. Owen's employment;

J. On August 5, 1986, Mr. Owen, in his role as successor Co-Executor and as a creditor, filed in the Probate Court of Cobb County, a petition to probate in solemn form, the 1982 Will and the three Codicils he had drawn;

K. On August 14, 1986, Mrs. Hubert filed a Caveat with the Cobb County Probate Court challenging Mr. Owen's fitness to serve as a Co-Executor or Trustee;

L. On August 14, 1986, C&S was appointed by the Cobb County Probate Court as temporary administrator of the Estate and, therefore, sought the approval of the Cobb County Probate Court with respect to distributions, real estate transactions, and other significant matters;

M. On August 17, 1986, Mr. Owen moved to voluntarily dismiss both his solemn and common form petitions;

N. On August 22, 1986, Deborah filed a Caveat with the Probate Court of Cobb County alleging first, that the Codicils to the 1982 Will (including the Second Codicil revoking the general power of appointment bestowed upon her mother and legal benefactor) were not properly attested under Georgia Code 53-2-40 and other provisions of Georgia law; secondly, that the 1982 Will was ineffective in that Mr. Owen and his wife were not competent to serve as witnesses to the Will within the standards required by Georgia law; thirdly, that the 1982 Will and its three Codicils were the product of undue influence in contravention of Georgia Code § 53-2-6 and other provisions of Georgia law; fourthly, that the 1982 Will and Codicils were the product of fraud and hence, ineffective under Georgia Code § 53-2-7 and other provisions of Georgia law; fifthly, that the 1982

Will and and its three Codicils were the products of mistake and are, therefore, unenforceable; and, finally, that at the time of executing the 1982 Will and Codicils, Mr. Hubert lacked the testamentary capacity required by Georgia Code § 53-2-6 and other provisions of Georgia law;

O. On August 22, 1986, Mrs. Hubert objected to the dismissal sought by Mr. Owen on the grounds that her earlier action constituted a claim for affirmative relief and was therefore a bar to Mr. Owen's dismissal;

P. On August 22, 1986, Mrs. Hubert also sought sanctions for Mr. Owen's failure to appear for a deposition;

Q. On August 29, 1986, Mr. Hubert's other daughters, Judith and Marilyn, also filed a Caveat attacking the 1982 Will and Codicils alleging that Mr. Hubert was not of sound and disposing mind and memory at the time he executed these documents, that he suffered from monomania, that the 1982 Will was obtained by false representations, and that Mr. Hubert was the object of undue influence and therefore, did not freely and voluntarily execute the Will;

R. On September 5, 1986, Mr. Owen filed a complaint with the U.S. Department of Labor under the Wage and Hour law (29 U.S.C. Section 201, *et seq.*) against the Estate, its heirs at law, and counsel;

S. On October 3, 1986, the Probate Court of Cobb County entered an order allowing Mr. Owen to voluntarily dismiss his petitions to file the 1982 Will and Codicils in common and solemn form;

T. On November 6, 1986, Mrs. Hubert, as widow, heir, and Co-Executrix and Trustee of the Hubert Estate, filed an action against Mr. Owen in Cobb County Superior Court seeking a declaratory judgment and equitable direction (captioned *Ruth S. Hubert v. Robert H. Owen,* Cobb County Superior Court Civil Action No. 86-1647399), and alleging that Mr. Owen was unqualified to serve as either Co-Executor or Trustee and that he had abused the trust and confidence that Mr. Hubert has bestowed upon him;

U. On December 8, 1986, Mr. Owen filed an Answer and Counterclaim in *Ruth S. Hubert v. Robert H. Owen,* Cobb County Superior Court, Civil Action No. 86-1647399, seeking actual damages for compensation in the amount of $279,000 under Count I, actual damages to his reputation in the amount of $2,000,000 under Count II, actual damages for slander in the amount of $2,000,000 under Count III, and actual damages for abuse of process in the amount of $2,000,000 and exemplary damages in the amount of $50,000,000 under Count IV;

V. On June 24, 1987, a settlement agreement entitled "Agreement of Interested Parties," (a true and correct copy of which was provided to Respondent's Estate and Gift Tax Attorney) was entered into by and among Mrs. Hubert, Richard, Marilyn, Judith, Deborah, the foregoing collectively referred to as the "Hubert Family," Mr. Owen, and Thomas Charron, as District Attorney for Cobb County, Georgia;

W. The Agreement of Interested Parties purported to resolve all differences between the various beneficiaries, executors, and Trustees;

X. On July 22, 1987, C&S filed a Petition for Declaratory Judgment and Equitable Direction in the Superior Court of Cobb County under the caption *Citizens and Southern Trust Company (Georgia), N.A., as Temporary Administrator of the Estate of Otis C. Hubert and nominated Co-Executor and Co-Trustee under the Last Will and Testament of Otis C. Hubert, deceased v. Ruth S. Hubert, Richard N. Hubert, Marilyn H. Kemper, Judith H. Manning,*

Deborah H. Jones, Robert H. Owen, Thomas Charron, as District Attorney for the Cobb Circuit, and Marcus E. Collins, Sr., as State Revenue Commissioner, Civil Action File No. 87-14337622 and addressing the import of the Agreement of Interested Parties;

Y. On August 4, 1987, Mrs. Hubert voluntarily dismissed, without prejudice, her action against Mr. Owen in *Ruth S. Hubert v. Robert H. Owen,* Cobb County Superior Court, Civil Action No. 86-1647399;

Z. On September 5, 1987, the State Revenue Commissioner filed his Answer to the C&S Petition for Declaratory Judgment alleging the following defenses: that the Agreement of Interested parties terminated and defeated the purpose of the Charitable Trust; that it violated the spendthrift clause of the Will; that it deprived the Testator of his right to dispose of his property by Will; that it unlawfully placed the Trustees of the Charitable Trust in a position of conflict; that it was unenforceable due to a failure of consideration; that it was contrary to public policy; that it modified the terms of the Charitable Trust; that it did not represent a consent by all Interested Parties, specifically the charitable beneficiaries; that the State Revenue Commissioner was a necessary party to the agreement; that it was not fair and reasonable as to all parties; and that it suffered from other defects.

AA. On October 15, 1987 and following, the State Revenue Commissioner served requests for production of documents, interrogatories, and notices of deposition upon the parties to the Agreement of Interested Parties;

BB. On October 15, 1987, the State Revenue Commission also moved for a continuance of the hearing then set for October 28, 1987, stating as

his reason a need and a right to pursue discovery;

CC. On October 26 and 28, 1987, hearings were held on the Motion for Continuance filed by the State Revenue Commissioner and on the Petition for Declaratory Judgment and Equitable Direction filed by Citizens and Southern Trust Company;

DD. Following the presentation of evidence, arguments, and briefs, the Superior Court denied the Motion for Continuance filed by the State Revenue Commissioner, restricted the scope of the issues before it, and approved the Agreement of Interested Parties in response to the Petition for Declaratory Judgment and Equitable Direction;

EE. On December 7, 1987, the State Revenue Commission filed a Notice of Appeal with the Supreme Court for the State of Georgia;

FF. On September 7, 1988, the Supreme Court issued is published opinion in *Collins v. Citizens and Southern Trust Company, et al.,* Supreme Court Case No. 45575;

GG. On September 20, 1988, C&S filed a Motion for Reconsideration with the Supreme Court;

HH. On November 10, 1988, the Supreme Court issued a revised opinion confirming the right of the State Revenue Commissioner, Marcus E. Collins, Sr., to inquire into and contest the first settlement agreement;

II. Discovery was then taken of the parties to the first settlement agreement and of the State Revenue Commissioner;

JJ. Mrs. Hubert filed a Caveat in support of and in conjunction with the Caveats filed by her daughters, in the event that the first settlement agreement should be set aside by the upcoming trial and its appeals;

KK. That Caveat offered by Mrs. Hubert seeks first to restore her general power of appointment

over the entire Estate by striking the Second Codicil to the 1982 Will and alternatively, seeks to strike both the 1982 Will and its three Codicils in favor of the 1977 Will under which she would be entitled to a greater share than she was entitled to under the first settlement agreement;

LL. The discovery, along with the proposed Caveat by Mrs. Hubert, has brought to light information previously undisclosed to the State Revenue Commissioner, on the condition of and incidents relating to Mr. Hubert in his advances years;

MM. If the Revenue Commissioner is successful, the charities would obtain a greater amount than that provided in the first settlement agreement on Mrs. Hubert's Will and Codicils.

NN. If successful, Mr. Owen would obtain a recovery greater than that provided in the first settlement agreement;

OO. All parties to the Will contest and settlement agreement dispute have recognized that, in light of the ruling by the Supreme Court in this case, all parties have the legal right and standing to assert their respective claims and that there are genuine disputes as to material facts;

PP. All parties to the dispute recognized that the first Agreement of Interested Persons, if successful, represented a negotiated settlement of the will contest and of the testimentary dispute between the Hubert Family and Mr. Owen.

QQ. Petitioner made QTIP elections with regard to four specific pieces of property to be distributed into separate and identifiable trusts with income for life to the surviving spouse, the remainder interest to one of Decedent's four children and that the necessary QTIP elections were made on the Estate Tax Return with regard to each of the four Ruth S. Hubert Trusts created to hold those four specifically designated pieces of property.

RR. Respondent has properly admitted (in the report prepared by its duly authorized representative which report served as the basis for the Notice) the facts set forth in the prior subparagraph.

SS. As Respondent's Estate and Gift Tax Examiner also properly recognized, where the parties to a bona fide Will contest which presents legitimate challenge to a charitable interest, involving a charitable remainder trust that does not qualify for the marital deduction and where the information provisions of Section 2056(c)(3) were not complied with, reach a bona fide good faith settlement of the Will contest resulting in an immediate payment or distribution to the charity in a new form, just as the first settlement agreement would have done and the parties fully expect will eventually be entered into, the Estate would be entitled to a charitable deduction for the value of the property distributed outright to the charitable trust![1]

TT. Respondent's duly authorized representative reviewed a proposed second settlement agreement of the dispute between the various beneficiaries ("Proposed Second Agreement"). The date of the Proposed Second Agreement reviewed by Respondent's designated representative is June 11, 1990.

UU. With respect to the Proposed Second Agreement, Respondent's duly authorized representative accurately acknowledges (again the report which

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[1] While Petitioner does not agree with Respondent's Estate and Gift Tax Examiner on this one point, in fairness to the Court and Respondent, Petitioner notes that although Respondent's Examiner would allow the charitable deduction, he would also limit the amount of that deduction to the lesser of the amount received pursuant to the Agreement or the amount to which, according to Respondent but not the Georgia attorney general, the trust would have been entitled under Decedent's 1982 Will and Codicils ("being 52.95% of the net probate residue remaining after distribution of the four parcels of real property to the children.")

served as the basis for the Notice) that if properly executed, the Proposed Second Agreement would:

(i) Constitute a *bona fide* good faith settlement;

(ii) Between adverse, arm's length parties;

(iii) Of a legitimate challenge to a charitable interest

VV. Petitioner properly and correctly reported in Decedents' gross estate on the Estate Tax Return all items required to be included in the Estate Tax Return; the value at which each item of property is included in the gross estate of the tax return is the correct and accurate value of such property.

WW. Subsequent to filing the Estate Tax Return, Petitioner has paid or incurred attorneys fees, accounting expenses, and fees and other expenses of administration which constitute deductions from the Decedent's gross estate in computing any Federal estate tax deficiency, liability or overpayment of the Petitioner and the Petitioner is entitled to a deduction for such expenses it has paid or incurred.

XX. Petitioner will continue to pay or incur attorneys fees, accounting expenses, litigation and other expenses of administration (including, without limitation, the credit for State death taxes) in contesting the Respondent's erroneous determination of deficiencies in estate taxes and in concluding the administration of the estate, and Petitioner is entitled to a deduction for such expenses in computing the amount of any deficiency, liability or overpayment of Federal estate taxes.

YY. As a result of the foregoing, there is no deficiency in tax with respect to the Form 706, United State Estate Tax Return, filed by Petitioner in the Estate of Otis C. Hubert.

6. Based upon added costs of administration and other deductible expenses, Petitioner is entitled to a refund, with interest, of overpaid Federal estate taxes in an amount that cannot yet be stated with precision.

WHEREFORE, Petitioner prays that after due proceedings it be determined that there is no deficiency in estate tax, that Petitioner is entitled to a refund of Federal estate taxes overpaid which result from the additional deductions to which Petitioner is entitled and which have not been deducted in the Estate Tax Return and for such other and further relief as the Court deems appropriate.

Respectfully submitted,

/s/ David D. Aughtry
DAVID D. AUGHTRY
Tax Court Number AD0165

/s/ James M. McCarten
JAMES M. MCCARTEN
Tax Court Number MJ1850

CHAMBERLAIN, HRDLICKA,
WHITE, JOHNSON & WILLIAMS
1400 Harris Tower
233 Peachtree Street, N.E.
Atlanta, Georgia 30303
(404) 659-1410

EXHIBIT A

Internal Revenue Service
District Director

Department of the Treasury

Date: Aug. 31, 1990

Estate of Otis C. Hubert,
Deceased
Citizens & Southern Trust
Co., Executor
Post Office Box 12448
Atlanta, GA 30355

SSN: 252-05-1011V

Contact: Notices Clerk

Phone: 404-331-6121

CERTIFIED MAIL

Dear Executor:

In accordance with the provisions of existing internal revenue laws notice is hereby given that the determination of the estate tax liability of the Estate of Otis C. Hubert, Deceased, who died June 2, 1986, discloses a deficiency of $14,052,146.00. The basis of our determination and a computation of the deficiency are presented in the attached statement.

If you want to contest this determination in court before making any payment, you have 90 days from the above mailing date of this letter to file a petition with the United States Tax Court for a redetermination of the amount of your tax. The petition should be filed with the United States Tax Court, 400 Second Street NW, Washington, D.C., 20217, and the copy of this letter should be attached to the petition. The time in which you must file a petition with the court (90 days) is fixed by law and *the Court cannot consider your case if your petition is filed late.*

If you decide not to file a petition with the Tax Court, we would appreciate it if you would sign and return the enclosed waiver form. This will permit us to charge your account quickly and will limit the accumulation of interest. The enclosed envelope is for your convenience. If you decide not to sign and return the statement and you

do not timely petition the Tax Court, the law requires us to bill you after 90 days from the mailing date of this letter.

If you have questions about this letter, please write to the person whose name and address are shown on this letter. If you write, please attach this letter to help identify your account. Keep the copy for your records. Also, please include your telephone number and the most convenient time for us to call if we need additional information. If you prefer, you may call the IRS contact person at the telephone number shown above. Thank you for your cooperation.

Sincerely yours,

FRED T. GOLDBERG, JR.
Commissioner
By

/s/ [Illigible]
District Direcotr

/s/ WIC

Enc: Copy of this letter
Statement
Waiver (Form 4089)
Envelope

401 West Peachtree Street NW, Atlanta, Georgia, 30365

Aug. 31, 1990

FORM 4089
NOTICE OF DEFICIENCY—WAIVER

Estate of Otis C. Hubert, Deceased
Citizens & Southern Trust Co., Executor
Post Office Box 12448
Atlanta, GA 30355

SSN: 252-05-1011V

Kind of tax: ESTATE Date of Death: June 2, 1986

DEFICIENCY: $14,052,146.00

See the attached explanation for the above deficiency.

The above deficiency of federal estate tax will be assessed either when the taxpayer's written agreement to the deficiency (Form 4089) is received or upon the expiration of 30 days from the date of this notice if a petition is not filed with the United States Tax Court.

If evidence of payment of additional state death tax is filed with this office within 90 days of this letter an additional credit in the amount noted in the attached computation (Form 3614A) will be allowed as a reduction of the estate tax liability and the assessment of the deficiency will be limited accordingly.

I consent to the immediate assessment and collection of the deficiencies (increase in tax and penalties) shown above, plus any interest provided by law.

AUTHORIZED SIGNATURE ———— Date: ——

———— Date: ——

NOTE: If you consent to the assessment of the amounts shown in this waiver, please sign and return it in order to limit the accumulation of interest and expedite our bill to you. Your consent will not prevent you from filing a claim for refund (after you have paid the tax) if you later believe you are entitled to a refund. It will not prevent us from later determining, if necessary, that you owe additional tax; nor will it extend the time provided by law for either action. If you later file a claim and the Internal Revenue Service disallows it, you may file suit for refund in a district court or in the United States Claims Court, but you may not file a petition with the United States Tax Court.

WHO MUST SIGN: A person acting in a fiduciary capacity (executor, administrator, trustee), must file Form 56, Notice Concerning Fiduciary Relationship, with this form if not previously filed. For an agent or attorney acting under a power of attorney, a power of attorney must be sent with this form if not previously filed.

IF YOU AGREE, PLEASE SIGN ONE COPY AND RETURN IT; KEEP THE OTHER COPY FOR YOUR RECORDS.

CC: David D. Aughtry, 233 Peachtree St., NE, 1400 Harris Tower, Atlanta, GA. 30303

Form 3614-A
COMPUTATION OF ESTATE TAX

Estate of Otis C. Hubert, Deceased
SSN: 252-05-1011V
D/D: June 2, 1986

Taxable Estate Plus Adjusted Taxable Gifts as shown in Return as Filed	**$ 1,516,624.00**
Increases (Decreases) to Taxable Estate plus Adjusted Taxable Gifts:	
(a) Adjusted Taxable Gifts	**9,202.00**
(b) Schedule K—Debts of the Decedent	**344,959.00**
(c) Schedule M—Marital Deduction	**12,650,592.00**
(d) Schedule O—Charitable Deduction	**200,000.00**
(e) Schedule O—Charitable Deduction	**12,502,655.00**
Taxable Estate plus Adjusted Taxable Gifts as Revised	**$27,224,032.00**
1. Tentative Tax	**$14,614,018.00**
2. Aggregate gift taxes payable (After 12/31/86)	**7,481.00**
3. Line 1 — line 2 =	**$14,606,537.00**
4. Unified Credit against estate tax	**$ 155,800.00**
5. Adjustment to unified credit	**—0—**
6. Allowable unified credit (line 4 — line 5 =)	**$ 155,800.00**
7. Line 3 — line 6 =	**$14,450,737.00**
8. Credit for state death taxes substantiated	**54,163.00**
9. Line 7 — line 8 =	**$14,396,574.00**
10. Other credits	**—0—**
11. Net estate tax	**$14,396,574.00**
12. Estate tax assessed	**344,428.00**
13. Increase in tax	**$14,052,146.00**
14. Less: Additional credit for state death taxes allowable, if substantiated:	**3,742,280.00**
15. Increase	**$10,309,866.00**

Estate of Otis C. Hubert, Deceased
Marietta, GA

Statutory Notice
Statement

Explanation of Adjustments

(a) It is determined that the adjusted taxable gifts of the decedent total $163,763.00, rather than $154,561.00, as returned. This adjustment reflects inclusion of the $9,202.00 in taxable gifts of the donor for the period ending December 31, 1980, which were excluded from the adjusted taxable gifts as reported on Line 4 of page 1 of the Federal Estate Tax Return.

Accordingly, the taxable estate is increased $9,202.00.

(b) It is determined that the reduction of the gross estate for the debts of the decedent reported in Schedule K should be in the amount of $939,656.00, the correct total of the items reported, rather than $1,284,615.00, the amount incorrectly reported for these items.

Accordingly, the taxable estate is increased $344,959.00.

(c) It is determined that the gross estate should not be reduced by the reported value ($12,650,592.00) of the property interests identified at Item 7 of Schedule M. The interest of the surviving spouse in such property is determined to be a terminable interest which does not qualify for a marital deduction. It is further determined that such interest is not a qualified terminable interest for which a marital deduction would be allowable.

Accordingly, the taxable estate is increased $12,650,592.00.

(d) It is determined that the gross estate should not be reduced by the $100,000.00 reported for each of the

trusts identified at Items 1 and 2 of Schedule O. The interest passing under each of these trust is determined not to be exclusively for charitable purposes, therefore neither of the trusts qualify for a charitable deduction.

Accordingly, the taxable estate is increased $200,000.00.

(e) It is determined that the gross estate should not be reduced by the $12,502,655.00 reported for the O.C. Hubert Charitable Trust identified at Item 6 of Schedule O. The interest passing under the O.C. Hubert Charitable Trust is determined not to be exclusively for charitable purposes, therefore does not qualify for a charitable deduction. It is further determined that such trust does not meet any of the exceptions which would permit the allowance of a charitable deduction for the property interest passing under the O.C. Hubert Charitable Trust.

Accordingly, the taxable estate is increased $12,502,655.00.

UNITED STATES TAX COURT

Docket No. 22333-90
JUDGE CLAPP

ESTATE OF OTIS C. HUBERT, DECEASED, CITIZENS & SOUTHERN TRUST COMPANY (GEORGIA) N.A., a national banking association, Temporary Administrator and Nominated Co-Executor, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

STIPULATION OF FACTS

IT IS HEREBY STIPULATED that, for purposes of this case, the following statements may be accepted as true, except as qualified herein, and all exhibits referred to herein and attached hereto, are incorporated in this stipulation and made a part thereof. Either party may introduce other and further evidence not inconsistent with the facts herein stipulated or the contents of the exhibits.

1. Otis C. Hubert ("Mr. Hubert"), a resident of the city of Marietta, Cobb County, Georgia, died on June 2, 1986.

2. The estate of O.C. Hubert ("Estate") mailed a federal estate tax return (Form 706) on September 2, 1987, received by Respondent on September 9, 1987, a true and correct copy of which is attached as Joint Exhibit 1-A. Attached as an appendix to Joint Exhibit 1-A is a true and correct copy of the Agreement of Interested Parties addressed in paragraph 23 of this Stipulation. The Estate also filed federal income tax returns for the taxable years ended May 31, 1987, 1988, 1989, and

1990, true and correct copies of which are attached respectively as Joint Exhibits 2-B,, 3-C, 4-D, and 5-E.

3. On August 31, 1990, Respondent issued a notice of deficiency ("Notice") to the Estate asserting a gross deficiency in estate tax in the amount of $14,052,146 before consideration of any state death tax credits. A true and correct copy of the Notice is attached as Joint Exhibit 6-F.

4. The Notice raises the following adjustments:

a. Adjusted taxable gifts of the decedent total $163,763, rather than $154,561 as reported on the Form 706.

b. Deduction claimed for debts of the decedent as reported by schedule K of the Form 706 were reduced $344,959 to reflect a mathematical error.

c. Marital deduction, item 7 of schedule M of the Form 706 in the amount of $12,650,592 was not allowed because the interest of the surviving spouse was deemed a terminable interest by Respondent.

d. Charitable deductions for two trusts, items 1 and 2 of schedule O of the Form 706, each in the amount of $100,000 each were deemed not to be exclusively for charitable purposes.

e. Charitable deduction for the O.C. Hubert Charitable trust, item 6 of schedule O of the Form 706, in the amount of $12,502,655 was not deemed to be exclusively for charitable purposes and therefore, does not qualify for a charitable deduction.

5. On October 10, 1990, subsequent to the issuance of the Notice, a will contest was finally settled between the members of Mr: Hubert's family, Robert H. Owen, and the charitable beneficiaries represented by the Attorney

General for the State of Georgia. This settlement was reduced to writing in the form of the Second and Final Settlement Agreement of Interested Parties ("Second and Final Settlement Agreement") which was, in turn, incorporated into an Order, Judgment and Decree on October 11, 1990 by the Superior Court of Cobb County, Georgia. This Order, Judgment and Decree was then adopted by the Probate Court of Cobb County on November 28, 1990 which had at all relevant times jurisdiction over the probate of the Estate. A true and correct copy of the Second and Final Settlement Agreement is attached as Joint Exhibit 7-G.

6. Respondent does not dispute that the Second and Final Settlement Agreement is a good faith compromise of a *bona fide* will contest.

7. Prior to executing his 1982 Will, Mr. Hubert executed a Last Will and Testament on December 2, 1975 ("1975 Will"); superseded by a new will executed on August 5, 1977 ("First 1977 Will"), and another will executed on November 7, 1977 ("Second 1977 Will"). The 1975 Will, the First 1977 Will, and the Second 1977 Will all provided for substantial charitable bequests and a general power of appointment vested in his wife, Ruth S. Hubert ("Mrs. Hubert"). True and Correct copies of these documents are attached as exhibits to the Second and Final Settlement Agreement (Joint Exhibit 7-G).

8. On January 9, 1982, Mr. Hubert executed the last will to be signed prior to his death ("1982 Will"). A true and correct of the 1982 Will is attached hereto as Joint Exhibit 8-H.

9. Mr. Hubert executed three Codicils to his 1982 Will on February 4, 1982, February 19, 1982, and June 8, 1983. Attached hereto as Exhibits 9-I, 10-J, and 11-K, respectively, are true and correct copies of the three Codicils to the 1982 Will. The 1982 Will and three Codicils, as modified by the Second and Final Settlement Agreement, revokes all prior wills and codicils.

10. Robert H. Owen, nephew of Mr. Hubert, drafted the 1982 Will and three Codicils.

11. Mr. and Mrs. Hubert have four children, Richard N. Hubert ("Richard"), Marilyn Hubert Kemper ("Marilyn"), Judith Hubert Manning ("Judith"), and Deborah Hubert Jones ("Deborah"), the children and Mrs. Hubert being sometimes collectively referred to herein as the "Hubert Family".

12. On July 3, 1986, Citizens and Southern Trust Company (Georgia), N.A. ("C&S"), successor by affiliate transfer to The Citizens and Southern National Bank, filed a petition with the Probate Court of Cobb County to probate the 1982 Will and its three Codicils in common form, there being no similar application by the other Co-Executor, Mrs. Hubert. This petition was ultimately rescinded.

13. On July 16, 1986, Letters Testamentary in common form were issued to C&S.

14. On July 17, 1986, a Decision Order was entered by the Probate Court of Cobb County revoking and rescinding the Letters Testamentary issued to C&S and ordering that probate of the estate of O. C. Hubert remain pending in said Court.

15. On July 18, 1986, as a result of a dispute between Mr. Owen and the Hubert Family, Mr. Owen filed, in his role as successor Co-Executor and as a creditor of the Estate, a petition with the Cobb County Probate Court to probate in common form the 1982 Will and its three Codicils he had drawn. This petition was ultimately withdrawn on October 3, 1986.

16. On August 14, 1986, Mrs. Hubert filed an action with the Cobb County Probate Court challenging Mr. Owen's fitness to serve as a co-executor or trustee.

17. On August 15, 1986, C&S was appointed by the Cobb County Probate Court as temporary administrator for the Estate.

18. On August 17, 1986, Mr. Owen filed a Notice of Voluntary Dismissal Without Prejudice of Application

for Letters Testamentary Under the Last Will and Testament of Otis C. Hubert.

19. On October 3, 1986, the Probate Court of Cobb County entered an order allowing Mr. Owen to voluntarily dismiss his petitions to probate the 1982 Will and Codicils in common and solemn form.

20. On September 5, 1986, Mr. Owen filed a complaint with the U.S. Department of Labor under the Wage and Hour Law (29 U.S.C. Section 201, *et seq.*) against the Estate, its heirs at law and counsel. A true and correct copy of this complaint is attached as Joint Exhibit 12-L.

21. On November 6, 1986, Mrs. Hubert, as Co-Executrix and Trustee of the Hubert Estate, filed an action against Mr. Owen in Cobb County Superior Court seeking a declaratory judgment and equitable direction (captioned *Ruth S. Hubert v. Robert H. Owen*, Cobb County Superior Court Civil Action No. 86-1647399) and alleging that Mr. Owen was unqualified to serve as either co-executor or trustee and that he had abused the trust and confidence that Mr. Hubert had bestowed upon him.

22. On December 8, 1986, Mr. Owen filed an Answer and Counterclaim in *Ruth S. Hubert v. Robert H. Owen*, Cobb County Superior Court Civil Action No. 86-1647399. A true and correct copy of this Answer and Counterclaim is attached hereto as Joint Exhibit 13-M.

23. On June 24, 1987, a settlement agreement entitled "Agreement of Interested Parties", was entered into by and among Mrs. Hubert, Richard, Marilyn, Judith, and Deborah, Mr. Owen, and Thomas J. Charron, as District Attorney for Cobb County, Georgia. A true and correct copy of this agreement is attached as an appendix to Joint Exhibit 1-A.

24. The Agreement of Interested Parties purported to resolve all differences between the various beneficiaries, executors, and trustees.

25. On July 22, 1987, C&S filed a Petition for Declaratory Judgment and Equitable Direction in the Superior Court of Cobb County under the caption *Citizens and Southern Trust Company (Georgia), N.A., as Temporary Administrator of the Estate of Otis C. Hubert and nominated Co-Executor and Co-Trustee under the Last Will and Testament of Otis C. Hubert, deceased v. Ruth S. Hubert, Richard N. Hubert, Marilyn H. Kemper, Judith H. Manning, Deborah H. Jones, Robert H. Owen, Thomas Charron, as District Attorney for the Cobb Circuit, and Marcus E. Collins, Sr., as State Revenue Commissioner*, Civil Action File No. 87-14337622 and addressing the import of the Agreement of Interested Parties.

26. On August 4, 1987, Mrs. Hubert voluntarily dismissed, without prejudice, her action against Robert Owen in *Ruth S. Hubert v. Robert H. Owen*, Cobb County Superior Court Civil Action No. 86-1647399.

27. The Estate filed its United States Estate Tax Return (Joint Exhibit 1-A) based on the 1982 Will and Codicils and the Agreement of Interested Parties. For purposes of this proceeding, the parties agree that the Estate Tax Return accurately reported the Total Gross Estate (line 1 of Form 706) and the fair market value of the individual assets owned by Mr. Hubert at the date of his death.

28. On September 5, 1987, the Georgia Revenue Commissioner filed his Answer to the C&S Petition for Declaratory Judgment alleging, among other defenses, that the Agreement of Interested Parties was unfair to the charitable interests and that he was a necessary party who had not consented to the agreement.

29. On October 26 and 28, 1987, hearings were held on a Motion for Continuance filed by the Georgia Revenue Commissioner and on the Petition for Declaratory Judgment and Equitable Direction filed by C&S. The Superior Court denied the motion and accepted the Agreement of Interested Parties.

30. On December 7, 1987, the State Revenue Commissioner filed a Notice of Appeal with the Supreme Court for the State of Georgia.

31. On September 7, 1988, the Supreme Court issued its published opinion in *Collins v. Citizens & Southern Trust Co., et al.*, Supreme Court Case No. 45575.

32. On September 20, 1988, C&S filed a Motion for Reconsideration with the Supreme Court.

33. On November 10, 1988, the Supreme Court issued a revised opinion confirming the right of the State Revenue Commissioner, Marcus E. Collins, Sr., to inquire into and contest the first settlement agreement. *Collins v. Citizens & Southern Trust Co.*, 258 Ga. 665, 373 S.E.2d 612 (1988). A true and correct copy of this decision is attached hereto as Joint Exhibit 15-0.

34. From October of 1987 through September of 1990, extensive discovery was served, resisted, and taken among the parties to the action by C&S in the Superior Court of Cobb County and with respect to third party witnesses.

35. The controversy and litigation pertaining to the Estate of O. C. Hubert among Mrs. Hubert and her children on one side, other relatives of Mr. Hubert, and the charitable beneficiaries as represented by the State Revenue Commissioner of Georgia and the Attorney General of the State of Georgia went on from July of 1986 through October of 1990.

36. Pursuant to negotiations, the Second and Final Settlement Agreement was entered into on October 10, 1990. A true and correct copy of the Second and Final Settlement Agreement is attached hereto and previously identified as Joint Exhibit 7-G.

37. On October 11, 1990, the Probate Court of Cobb County entered an order authorizing C&S to compromise the claims of Mr. Owen against the Estate of O.C. Hubert for a payment of $150,000 in addition to the $16,000 which had already been paid.

38. On October 11, 1990, the Superior Court of Cobb County entered an Order, Judgment and Decree.

39. The Order, Judgment and Decree recognized that there were genuine and material disputes between the parties and approved the Second and Final Settlement Agreement, and ordered the nominated executors and trustees to comply with the terms of the 1982 Will and codicils as modified by the Agreement.

40. On November 28, 1990, the Probate Court of Cobb County entered an order adopting the Order, Judgment and Decree of the Superior Court as a binding order and judgment in the Probate Court proceedings involving the Estate of O. C. Hubert. Consequently, the Second and Final Settlement Agreement (as modifying the 1982 Will and Codicils) controls the actual distribution of Mr. Hubert's Estate.

41. On November 28, 1990, the Probate Court of Cobb County issued Letters Testamentary to C&S and Richard N. Hubert as co-executors of the Estate of O. C. Hubert.

42. With respect to the Hubert Estate, the following is a list of certain events and their dates of occurrences:

Date	Description
4/1/90	Date on which income of the properties ultimately selected for the Marital Share became allocable to the Marital Share in accordance with Paragraph 10 a.(2) of the Second and Final Settlement Agreement.
10/10/90	Date of execution of the Second and Final Settlement Agreement.
10/10/90	Effective date on which all income and expenses of the Estate was separately allocated to the Marital Share and the Charitable Share.
11/1/90	Date on which C&S set up the Marital Share segregation account.

Date	Description
11/2/90	Date on which C&S commenced funding the Marital Share segregation account.
11/28/90	Date C&S and Richard Hubert are issued Letters Testamentary as Co-Executors of the Hubert Estate.
4/10/91	Date on which the division of properties between Marital Share and the Charitable Share is completed.
4/30/91	Date of First C&S report after completion of the division of properties.
9/26/91	Arbitrary date through which ongoing administrative expenses of the Estate have been computed.

43. The Second and Final Settlement Agreement incorporated a procedure at Paragraph 10 for division of the residuary estate between the marital and charitable shares. That division was negotiated between representatives for the Hubert Family and representatives for the charities from October, 1990 until April 10, 1991 when agreement was reached. The schedules of real property designations and values used by representatives for the family and representatives for the charities for purposes of the division are collectively attached hereto as Joint Exhibit 14-N.

44. The parties agree to the use of the following amounts applicable to certain subparagraphs of Paragraph 10 of the Second and Final Settlement Agreement in computing the Marital Share:

a. The starting point as set forth in Paragraph 10 a.(1) is $14,390,000.00;

b. The amount of the pre-agreement expense adjustment to be added to the Marital Share pursuant to Paragraph 10 a.(1) and 10 a.(1)(A) is

$3,482,260.59. This represents an increase for expenses previously charged to income. The amount of the pre-distribution/segregation expense adjustment to be subtracted from the Marital Share pursuant to Paragraph 10 a.(1)(A) is $3,299.087.27. This represents 48% of the total expenses incurred prior to the execution of the Agreement. The net of these two adjustments is an addition to the Marital Share of $183,173.32.

c. The amount of the advancements and distributions from the Estate of Mrs. Hubert to be subtracted from the Marital Share pursuant to Paragraph 10 a.(1)(B) is $1,219,602.62. This represents amounts distributed prior to the execution of the Agreement.

d. The amount of the increase to be added to the Marital Share pursuant to Paragraph 10 a.(2) representing the income earned on the assets selected by Mrs. Hubert for the GPA Trust and QTIP Marital Trust from April 1, 1990 to October 10, 1990, is $699,376.34.

45. The post-agreement administrative expenses incurred by the Marital Share were $398,269.37 through April 10, 1991, the date of the final division of the property. In addition, post-agreement administrative expenses have been incurred from April 10, 1991 through September 26, 1991 in the amount of $150,144.28. Additional administrative expenses will be incurred after September 26, 1991 in an undetermined amount. Of these expenses the amount of $350,000.00 has already been deducted on the Hubert Estate's original Form 706 as an estimate of the Executor's fees.

46. C&S valued the net undistributed real and personal property as of April 30, 1991, the date of the first statement for the Estate after the property division under the Second and Final Settlement Agreement was finalized,

at $32,095,354. During the course of selecting which properties would fund the Marital Share (with the remainder going to the Charitable Share) a representative for the Hubert Family and a representative for the charities used certain real property values that varied from the C&S values as follows:

Account Name	A/C #	Total C&S Values	Less C&S Real Property Values	Plus Real Property Division Amounts	Total Adjusted Property Division Amounts
Temp Adm. Est. of O.C. Hubert	154120	$17,943,551	$16,797,895	$13,993,150	$15,138,806
GPA Trust	154121	7,950,202	4,193,015	4,154,082	7,911,269
Deborah Jones	154122	784,016	702,000	702,000	784,016
Marilyn Kemper	154123	733,613	692,407	626,000	667,206
Richard Hubert	154124	1,197,976	1,350,000	1,350,000	1,197,976
Judy Manning	154125	2,371,836	2,118,935	2,110,000	2,362,901
Others assets not on C&S Report		1,114,160	0	0	1,114,160
(Primarily bonds in possession of Mrs. Hubert which are now in the possession of the Estate)					
TOTAL		$32,095,354	$25,854,252	$22,935,232	$29,176,334

47. The date of death value (June 2, 1986) of the real property owned by the Estate on April 10, 1991, as shown on the Hubert Estate's Form 706, was $22,481,350. Real properties of a date of death value of $1,394,725 were disposed of during the period from June 2, 1986 to April 10, 1991.

48. The testimony which would be given by William S. Saville, as Vice-President in the C&S Trust Department, if called as a witness at trial includes the statements set forth in his affidavit attached as Joint Exhibit 16-P. This affidavit is accepted as testimony for all purposes in this case.

49. The testimony which would be given by Aymar H. Manning, a real estate broker and a son-in-law of decedent, if called as a witness in this case includes the statements set forth in his affidavit attached as Joint Exhibit 17-Q. This affidavit is accepted as testimony for all purposes in this case.

50. The gross estate and specific bequests based upon date of death values are as follows:

CALCULATION OF FORM 706 GROSS RESIDUE
BASED ON DATE OF DEATH VALUES

GROSS ESTATE	$30,254,219
SPECIFIC BEQUESTS	
SPOUSE	$ (220,747)
CHURCHES	$ (400,000)
OTHERS	$ (30,000)

51. The parties agree that all of the Hubert Family signatories to the Second and Final Settlement Agreement would testify that they intended to enlarge, not reduce, the estate passing to the beneficiaries. Further, they would also testify that they understood Mr. Hubert's intention to be the same.

52. On September 28, 1989, James E. Hicks filed a lawsuit against the Citizens and Southern National Bank, (as the temporary administrator of the estate of Mr. Hubert) and Richard N. Hubert in the Superior Court of

Cobb County, State of Georgia, Civil Action No. 8916644-04. The case remains pending.

53. In his complaint, Plaintiff James E. Hicks asked for a judgment against the Estate of Mr. Hubert in the amount of $352,00.00, plus interest, attorney's fees and punitive damages in an unspecified amount pursuant to the alleged breach of an employment contract between Mr. Hicks and Mr. Hubert. True and correct copies of the complaint and the employment contract are attached as Joint Exhibits 18-R and 19-S.

54. Attached as Joint Exhibit 20-T is a true and correct copy of a letter from Eastham and Grate, attorneys for Plaintiff James E. Hicks, in said action, setting forth Plaintiff's settlement demand.

55. The parties agree that the following additional claims are allowed as a claim or debt of the Estate for Estate Tax purposes:

Claimant	Amount
Owen, Robert	$166,000
Foster, Trustee	$ 6,500
Safeco Title Co.	$ 33,333

The parties further agree that the claim of James E. Hicks will be allowed as a claim against the Estate in the amount of $166,000 unless said claim is disposed of for a lesser amount prior to the termination of this case, in which event it shall be allowed in such lesser amount.

The parties agree to these amounts because of minimal impact on the Estate without taking into consideration the date of death value of the claims.

56. Attached are true and correct copies of certain documents relating to the probate of Mr. Hubert's will:

a. Attached as Joint Exhibit 21-U is a true and correct copy of Letters Testamentary issued to the Citizens & Southern National Bank in common form, dated July 16, 1986.

b. Attached as Joint Exhibit 22-V is a true and correct copy of an Order of the Probate Court of Cobb Cunty, dated July 17, 1986, in the Estate of O.C. Hubert rescinding the probate in common form and the Letters Testamentary issued to Citizens & Southern National Bank.

c. Attached as Joint Exhibit 23-W is a true and correct copy of an Order dated August 15, 1986 appointing the Citizens & Southern National Bank as Temporary Administrator of the Estate of O.C. Hubert.

d. Attached as Joint Exhibit 24-X is a true and correct copy of the Petition to Probate Will in Solemn Form in the Estate of O.C. Hubert, filed by the Citizens & Southern Trust Company (Georgia) N.A. with the Probate Court of Cobb County, State of Georgia on June 1, 1990.

e. Attached as Joint Exhibit 25-Y are true and correct copies of Caveats filed by Mr. Hubert's wife, Ruth S. Hubert, in the Probate Court of Cobb County, Georgia, in the Estate of O.C. Hubert on August 14, 1986, and June 26, 1990.

f. Attached as Joint Exhibit 26-Z is a true and correct copy of a Caveat filed by Mr. Hubert's daughter Deborah Hubert Jones, in the Probate Court of Cobb County, Georgia, in the Estate of O. C. Hubert on August 22, 1986.

g. Attached as Joint Exhibit 27-AA is a true and correct copy of a Caveat filed by Mr. Hubert's daughters Judith Manning and Marilyn Kemper in the Probate Court of Cobb County, Georgia, in the Estate of O. C. Hubert on August 29, 1986.

h. Attached as Joint Exhibit 28-AB is a true and correct copy of a Caveat filed by Mr. Hubert's three daughters in the Probate Court of Cobb

County, Georgia, in the Estate of O. C. Hubert on or about June 11, 1990.

l. Attached as Joint Exhibit 29-AC is a true and correct copy of Letters Testamentary issued in solemn form to Citizens & Southern Trust Company (Georgia) N.A. and Richard N. Hubert as Co-Executors of the Estate of O.C. Hubert, dated November 28, 1990.

57. With respect to the Marital deduction attributable to the residuary estate, the position of the parties as to the amount of residuary corpus actually passing to Mrs. Hubert is as follows:

SECOND AND FINAL SETTLEMENT	PETITIONER	RESPONDENT
Para. 10 a. (1)	$ $14,390,000	$14,390,000
Para. 10 a. (1) and 17 (a) $3,482,262 ($3,299,087)	$ 183,175	$ 183,175
Para. 10 a. (2)	$ 699,376	$ 699,376
Subtotal Marital	$15,272,551	$15,272,551
DIFFERENCES		
Para. 10 a. (1) (B) (Mar. Inc.)	($ 1,219,603)	
10 a. (2) (Mar. Inc.)	($ 699,376)	
Implicit Interest Income (7% from 6/2/87 to 10/10/90)		($ 2,847,541)
Para. 10 f. (3) Post-Agmt. Post Agmt. Inc. ($608,311 through 4/10/91)	No Effect on M.D.	—0—
Post Agmt. Exp. $548,413 through 9/26/91; $398,269 through 4/10/91)	No Effect on M.D.	($ 548,413)
Allowable Resid. Mar. Ded.	$13,353,572	$11,896,597*

* Respondent contends this amount is further reduced by 48% of any estate taxes and interest due pursuant to Paragraph 10 c. and d. of the Second and Final Settlement Agreement and that the Estate's marital deduction is further limited to the actuarial value of the property passing to the spouse under decedent's will and codicils.

58. With respect to the charitable deduction attributable to the residuary estate, Petitioner contends that, under Paragraph 10 e. of the Second and Final Settlement Agreement, the remainder of the residuary corpus and income is to be paid over to the charitable trust and that Petitioner is entitled to a charitable deduction of that remainder for Federal Estate tax purposes as follows (based on the assumption that the date of death residuary is $26,224,436 and the corpus allocated to the marital share is $13,353,572):

Date of Death Residuary—Corpus	$26,224,436
Allocated to Marital—Corpus	(13,353,572)
Balance to Charity—Corpus	$12,870,864

Respondent contends that, under Paragraph 10 of the Second and Final Settlement Agreement, the remainder of the residuary corpus and income is to be paid over to the charitable trust and that the amount of property actually passing to the charities from the residuary estate is as follows:

Adjusted Value as of 4/30/91 (ref. Stip. ¶ 46)	$29,176,334
Previously Distributed Inc.	$ 1,219,603
Marital Share before Implicit Int. Inc. and Post Agmt. Expenses	($15,272,551)
Share of Unpaid Post Agmt. Admin. Exp.	($ 185,000)
Subtotal Charitable	$14,938,386
Less Implicit Int. Inc. (7% per annum) from 6/2/87 to 10/10/90	($ 3,098,001)
Charitable Deduction Per Resp.	$11,840,385**

** Respondent contends this amount is further reduced by 52% of any estate tax and interest due pursuant to Paragraph 10 c. and d. of the Second and Final Settlement Agreement and that the Estate's charitable deduction is limited further to the actuarial value of the property passing to the charities under decedent's will and codicils.

Petitioner maintains with respect to Respondent's calculation of the charitable deduction (a) that the proper starting number is the C&S value as of 4/30/91 of $32,095,354 rather than $29,176,334; (b) that the administrative expenses are payable out of income and do not reduce the residuary corpus passing to the Charitable Trust; and (c) that the Estate has already dealt with the actual income passing to the Charitable Share as indicated on the Forms 1041.

59. Respondent contends that the actuarial value of the life estate and the charitable remainder interest bequeathed in decedent's Will is calculated according to Treas. Reg. § 20.2031-7.

60. The parties agree that some portion paid to or on behalf of Mrs. Hubert by the Estate, is an amount representing income to Mrs. Hubert.

61. The amount and deductibility of litigation fees incurred by the Estate will be determined under Rule 155 or subsequent proceeding. The effect which these fees may have on the marital and charitable deductions, if any, is also reserved for this proceeding.

62. The parties disagree as to whether $200,000 of the specific bequests included in the charitable bequest by Petitioner is deductible. This is a separate and unresolved issue.

63. When Mr. Hubert first moved to Atlanta in 1928, he joined the Baptist Tabernacle Church in the inner city area. He continued to attend the Baptist Tabernacle until 1952, when he moved from the downtown area to Marietta outside of Atlanta.

64. From that time to his death, he regularly attended the First Baptist Church of Marietta rather than the Baptist Tabernacle.

65. In one instance, he and a man by the name of John Nance were asked to sponsor two missionaries from the church, Roland Cornelius and Redford Trammel, who the Baptist Tabernacle could not otherwise finance.

66. Mr. Hubert had no relationship with them other than through the Baptist Tabernacle.

67. Mr. Hubert and Mr. Nance agreed to sponsor them and did so through the Baptist Tabernacle for a number of years until Mr. Nance was no longer able. At that time, Mr. Hubert assumed Mr. Nance's share of the responsibility.

68. Mr. Trammell is an independent Baptist Missionary, commissioned by North Avenue (now Park View Baptist Church), Northlake, Illinois and supported by several churches and individuals. He is presently a member of Calvary Baptist Church, Sparta, Tennessee. Mr. and Mrs. Hubert were members of a Baptist Church in Georgia at the same time that he was a member of a Baptist Church in South Carolina in January 1982.

69. Mr. Trammell's birthdate is June 28, 1931.

70. Mr. Trammell entered foreign missionary work in September 1960 when he arrived in Peru.

71. Except for furloughs in the United States Mr. Trammell has been working continuously in Peru helping Peruvians start Baptist churches. So far he has been able to start fifteen churches, most of which have their own pastors and buildings.

72. Mr. Trammell has not made any specific agreement with any church or other organization concerning the distribution of the funds designated to his work by Mr. Hubert.

73. At the time the Will was drawn (January 1982), Reverend Roland Cornelius was affiliated with Baptist International Missions, Inc. ("BIMI") which has a home office in Chattanooga. The Baptist Tabernacle of Atlanta is a supporter of that organization. He met Mr. O.C. Hubert as a youth when Mr. Hubert taught him Sunday School at the Baptist Tabernacle of Atlanta.

74. His birthdate is March 12, 1933. His age at the time of the Will was 48.

75. He entered missionary work in 1956.

76. Generally, his and his wife's work has always been missionary radio. He spent 16 years in Africa, another 14 years with BIMI, part of which time he worked on a project called Lighthouse of the Caribbean, and thereafter and to date he has been associated with Aviation Radio Missionary Services, a tax exempt organization.

77. Mr. Hubert's date of birth was March 24, 1906.

78. Attached as Joint Exhibit 30-AD is a summary of the expenses paid by the Estate through October 10, 1990, used in the computation of the Marital Share pursuant to Paragraph 10 a.(1) of the Second and Final Settlement Agreement.

79. Attached as Joint Exhibit 31-AE is a summary of the administrative expenses paid by the Estate through October 10, 1990.

80. Attached as Joint Exhibit 32-AF is a summary of the administrative expenses for attorneys' fees, fiduciary fees and accounting fees paid by the Estate from October 10, 1990, to September 26, 1991.

81. Attached as Joint Exhibit 33-AG is a summary of the Marital Share portion of the administrative expenses for attorneys' fees, fiduciary fees and accounting fees paid by the Estate from October 10, 1990, to September 26, 1991, further broken down between those paid through April 10, 1991, and those paid after April 10, 1991.

82. The testimony which would be given by Catherine Lacienski, Chief of the Atlanta Appeals Audit Section, if called as a witness at trial, includes the statements set forth in her affidavit attached as Joint Exhibit 34-AH. Petitioner reserves the right to challenge her affidavit on the grounds of lack of competency.

ABRAHAM N.M. SHASHY, JR.
Chief Counsel
Internal Revenue Service

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Atlanta, Georgia 30303
(404) 659-1410

DATED: December 17, 1991

STATE OF GEORGIA)
)
COUNTY OF FULTON)

AFFIDAVIT

PERSONALLY APPEARED before the undersigned officer duly authorized to administer oaths, WILLIAM S. SAVILLE, who, having been first duly sworn upon his oath, deposes and says as follows:

1. My name is William S. Saville and I am a Vice-President in the Trust Department of C&S/Sovran Trust Company [formerly Citizens & Southern National Bank of Georgia (N.A.)] (the "Bank").

2. O.C. Hubert (Mr. Hubert), a resident of the city of Marietta, Cobb County, Georgia, died on June 2, 1986.

3. The Bank was named as one of the two co-executors in the Last Will and Testament of O.C. Hubert dated January 7, 1982 ("1982 Will"). Furthermore, when a will contest arose, the Bank was named as Temporary Administrator and then as a co-executor once the will contest was resolved.

4. Mr. Hubert was survived by his wife, Ruth S. Hubert ("Mrs. Hubert") and their four children: Richard N. Hubert, Marilyn Hubert Kemper, Judith Hubert Manning, and Deborah Hubert Jones, the children and Mrs. Hubert being sometimes collectively referred to herein as the "Hubert Family".

5. Immediately after Mr. Hubert's death, I was assigned responsibility for handling the Hubert Estate for the Bank and have continued to do so ever since.

6. The responsibilities of the Bank include acting on behalf of the Hubert Estate in all matters including filing returns, paying expenses, and overseeing all activity engaged in by the Estate.

7. In that regard, the Estate filed its Federal Estate Tax Return (Form 706) on September 2, 1987. The

Estate also filed Federal Fiduciary Income Tax Returns (Form 1041).

8. The 1982 Will provided for a series of specific bequests with the majority of the Estate passing by way of a residuary trust giving Mrs. Hubert all the income for life and a testamentary general power of appointment over all of the remainder. Absent the exercise of that general power of appointment, the remainder went over to a charitable trust for the sick, starving, and those who need Bibles.

9. The 1982 Will was amended by three codicils drafted by Mr. Robert H. Owen and executed by Mr. Hubert. The second codicil ("Second Codicil to 1982 Will") purported to repeal the general power of appointment in favor of Mrs. Hubert.

10. Mrs. Hubert's daughters filed caveats contesting the 1982 Will and Codicils on, among other grounds, that Mr. Owen had exercised undue influence over Mr. Hubert and defrauded Mrs. Hubert out of her rights under the general power of appointment.

11. That dispute was ultimately purportedly resolved by a document captioned "Agreement of Interested Parties" (also referred to herein as "First Settlement").

12. This agreement was executed by Mr. Owen, the Hubert Family, and the District Attorney for Cobb County, Georgia on behalf of the charitable interests.

13. The Georgia Revenue Commissioner, on behalf of the charitable interests and through the Attorney General of the State of Georgia, challenged the First Settlement.

14. From September of 1987 through October of 1990, litigation with the State of Georgia ensued from the Probate Court of Cobb County through the Cobb County Superior Court to the Georgia Supreme Court and back.

15. After approximately three years of negotiation, the litigants entered into a settlement captioned "Second and Final Settlement Agreement of Interested Persons Regarding the Estate of O.C. Hubert" ("Second and Final Settlement Agreement").

16. The Second and Final Settlement Agreement provided, among other terms, for payment of the claim lodged by Mr. Owen and for division of the residuary estate, subject to designation of the individual tracts of real estate, as follows:

a. The Marital Share is to receive $14,390,000 subject to various adjustments;

b. One of these adjustments is a credit of the income previously paid to or for, and reported by, Mrs. Hubert in the amount of $1,219,602.62; and

c. The remainder of the residuary is to pass to the Charitable Trust for the sick, starving, and those who need Bibles.

17. A segregation account for the Marital Share was set up on the books of the Hubert Estate commencing November 1, 1990, the first day of the first month following the date of the Second and Final Settlement Agreement, to segregate the Marital Share from the remainder of the Estate.

18. On November 2, 1990, the Hubert Estate commenced funding the Marital Share segregation account.

19. C&S, as Co-Executor, considered the segregation of the assets to take place as of October 10, 1990, the date of the Second and Final Settlement Agreement, because said Agreement required the actual income and expenses of the properties to be allocated from that date forward between the segregated Marital Share and the segregated Charitable Share depending upon which properties went to each share.

20. In accordance with Paragraph 10 of the Second and Final Settlement Agreement, the Marital Share to be distributed to the GPA Marital Trust and the QTIP Marital Trust totaled $14,052,947.04 as of the date of the agreement, the Marital Share amount was computed in

accordance with Paragraph 10 of the Second and Final Settlement Agreement as follows:

(a) C&S began with the initial amount as set forth in Section 10(a)(1) of $14,390,000;

(b) To that amount was added the pre-agreement expense adjustment pursuant to Paragraph 10(a)(1) and 10(a)(1)(A) which amount was $183,174;

(c) From that amount was subtracted the income distributions from the Estate to Mrs. Hubert pursuant to Paragraph 10(a)(1)(B) which amount was $1,219,603;

(d) To that amount was added the income on the assets selected by Mrs. Hubert for the GPA Trust and the QTIP Marital Trust from April 1, 1990, to the date of the Second and Final Settlement Agreement pursuant to Paragraph 10(a)(2) which amount was $699,376.34; and

(e) No amount was subtracted to reflect the administrative expenses after the date of the Second and Final Settlement Agreement because it is anticipated that the off-setting adjustments of income and expenses under Paragraph 10(f)(3) will yield an ongoing net future entitlement to the Marital Share (that is, income in excess of expenses). All the administrative expenses incurred after the date of the Agreement have either been deducted on the Form 706 (thus already reducing the amount of the residuary eligible for the marital and charitable deductions) or it is contemplated that they will be deducted on the Forms 1041 of the Estate to be filed.

21. The post-agreement administrative expenses incurred by the Marital Share have been $398,269.37 through April 10, 1991, and $548,413.65 through September 26, 1991. Of these expenses the amount of $350,000.00 has already been deducted on the Hubert Estate's original Form 706. The prorated post-agreement

income was $608,311 through April 10, 1991, and $1,173,1710 through September 26, 1991.

22. The residuary estate based upon date of death values is $26,224,436 calculated as follows:

CALCULATION OF FORM 706 GROSS RESIDUE BASED ON DATE OF DEATH VALUES

GROSS ESTATE	$30,254,219
SPECIFIC BEQUESTS	
SPOUSE	$ (220,747)
CHURCHES	$ (400,000)
OTHERS	$ (30,000)
SCHEDULE J DEDUCTIONS PER RETURN	$ (506,989)
SCHEDULE K DEDUCTIONS	$(2,472,047)*
ESTATE TAX	$ (400,000)
TOTAL RESIDUARY ESTATE	$26,224,436

* This does not include the claim of James E. Hicks, the deductibility of which is at issue in this case.

23. The Second and Final Settlement Agreement provided for payment to the Charitable Share of the remainder of the residuary estate after payment of the Marital Share (and the specific bequests) to be distributed to a charitable trust.

24. Item XIX of the 1982 Will granted the executors the power to charge expenses against principal or income. Item XIX also directed us to make any elections for tax purposes in the best interests of the beneficiaries. Items XIX and XXI of the Will also indicated that Mr. Hubert's intent was to maximize the marital and charitable deductions in order to maximize the amount passing to the beneficiaries.

25. Based upon these considerations in the Will, the Estate allocated administrative expenses between the income and corpus interests on the Federal Estate Tax and Fiduciary Income Tax Returns as follows:

Expense	(Form 706)	(Form 1041: 5/31/87 thru 5/31/90)
C&S Fees	$350,000	$371,696
Appraisals	$90,000	94,844
Legal	40,000	991,905
Acctng.	20,000	—

26. Pursuant to the first C&S report (as of April 30, 1991) folowing the division of the properties between the Marital Share and the Charitable Share on April 10, 1991, C&S valued the undistributed real and personal property of the Hubert Estate at $32,095,354. This was made up of the following accounts:

Account Name	A/C#	Total C&S Amount
Temp Adm. Est. of O.C. Hubert	154120	$17,943,551
GPA Trust	154121	7,950,202
Deborah Jones	154122	784,016
Marilyn Kemper	154123	733,613
Richard Hubert	154124	1,197,976
Judy Manning	154125	2,118,935
Other assets not on C&S report (Primarily bonds in possession of Mrs. Hubert which are now in the possession of the Estate)		1,114,160
TOTAL		$32,095,354

27. Through the date of the Second and Final Settlement Agreement of Interested Persons Regarding the Estate of O.C. Hubert (the "Agreement"), a true and correct copy of which is attached as Exhibit 10, the Estate distributed income to or for Mr. Hubert's widow, Mrs. Ruth S. Hubert, in the amount of $1,219,602.62.

28. This income was included in the total amount passing to the Marital Share under the Second and Final Settlement Agreement.

29. It has always been the belief of the Bank that Mr. Hubert's intent was to enlarge, not reduce, the estate passing to his beneficiaries.

30. The monthly report of C&S for the Hubert Estate for the month ended April 30, 1991, showed a net value of the assets of the Estate of $30,981,194.00. In addition, $1,114,160.00 of assets belonging to the Estate, which were in the possession of Mrs. Hubert and are now in the possession of the Estate, were not listed on the report. Accordingly, the total net value of the Estate at April 30, 1991, was $32,095,354.00.

31. As part of its duties first as temporary administrator and then as co-executor of the Hubert Estate, C&S adjusted the values of the properties to reflect information known to C&S.

32. On its reports, C&S adjusted the values of the properties to reflect any new appraisal that was obtained on a property, any increases in the property tax values above the value at which C&S was carrying a property, and any capital improvements on a property.

33. C&S was aware of the values recorded by the representatives of the Hubert family and the charities in making the division of properties pursuant to the Second and Final Settlement Agreement.

34. The difference between the C&S values and the values arrived at by the representatives of the Hubert family and the charitable interests for the properties going to the Marital Share was only $114,275.00.

35. Pursuant to Paragraph 10 of the Second and Final Settlement Agreement, the values of the Marital Share properties had to be computed in order to fund the amount of $14,052,947.00 determined to be going to the Marital Share pursuant to Paragraph 10.

36. C&S understood that it was unnecessary in the real property division process to value the properties going to the Charitable Share because pursuant to Paragraph 10 of the Second and Final Settlement Agreement, the Charitable Share received all the properties, regardless of their value, that were not selected to fund the Marital Share.

37. The difference between the C&S value for the properties going to the Charitable Share and the amount used by the representatives of the Hubert family and the Charitable Share with respect to such properties was $2,804,745.00.

38. In most instances, the representatives of the Hubert family and the Charitable Share assigned the date of death value to the properties going to the Charitable Share. These values failed to reflect capital improvements made to some of the properties and the substantial appreciation of a number of the properties.

39. By way of example, C&S increased the values of the following properties based upon appraisals obtained in 1989 and 1990 whereas no adjustment was made to the date of death values used in the real property division process:

706 Ref.	Description	706 Value	C&S Value 4/30/91	Division Value	Increase Per C&S Value
100	US 41 & Cobb Parkway	219,000	600,000	219,000	381,000
76	Andrews (Kemps & Cobb Pkwy)	729,000	1,500,000	729,600	770,400
78	17 ac. 41 @ Mars Hill	340,000	740,000	340,000	400,000
85	35 acres	3,692,000	3,980,000	3,692,000	288,000
31	Marble Mill	1,232,000	1,370,000	1,232,000	138,000
	TOTAL	6,212,600	8,190,000	6,212,600	1,977,400

40. Based on the foregoing facts, C&S believes that the values that it has used on its reports more accurately reflect the true value of the properties of the Estate than do the amounts assigned in dividing the residuary property of the Estate.

41. Our opinion remains that the valuation by C&S fairly reflects the fair market value of the real estate and

is far more accurate than the amounts assigned in the real property division process.

/s/ William S. Saville
WILLIAM S. SAVILLE

[Jurat Omitted in Printing]

UNITED STATES TAX COURT

Docket No. 22333-90
JUDGE CLAPP

ESTATE OF OTIS C. HERBERT, DECEASED, CITIZENS & SOUTHERN TRUST COMPANY (GEORGIA) N.A., a national banking association, Temporary Administrator and Nominated Co-Executor, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

STIPULATION OF AGREED ISSUES

IT IS HEREBY STIPULATED that, for purposes of this case, the parties shall be bound to the terms and conditions set forth below:

1. Respondent does not dispute that the Second Settlement Agreement modified the 1982 Will and three Codicils so that the split interest provisions under I.R.C. Section 2055(e) does not bar a deduction for the charitable gift and that the provisions of Section 2056(b)(7)(B)(III) (proper election of QTIP) does not bar a deduction for the marital gift.

The parties agree that the issues remaining with respect to the estate tax marital and charitable deductions are as follows:

a. *Marital Issues.*

(i) Whether the amount of the petitioner's marital deduction is limited to the lesser of: (1) the amount passing to the spouse under the 1982 Will and three codicils or (2) the amount actually passing to the spouse.

Petitioner asserts that there is no such limitation; and, even if there were such a limitation, that it would be mathematically irrelevant here.

Respondent asserts that there is a limitation.

(ii) Whether, under Section 2056(b)(4) the amount of residuary corpus passing to the Marital Share (pursuant to the 1982 Will and Codicils, as modified by the Second and Final Settlement Agreement) must be reduced by obligations charged to the Marital Share, without regard to (a) whether the Estate charged those expenses to income on the Forms 1041 and (b) whether there are offsetting income adjustments under the settlement.

Petitioner asserts first that the authority of this Court (in *Est. of Richardson, infra* and *Estate of Street, infra*) and Georgia law establish the right of an Estate to charge such expenses to income; secondly, the 1982 Will and Codicils, as modified by the Second and Final Settlement Agreement, permit, if not instruct, the Executors to pay such expenses out of income (i.e., any charge of these expenses to the Marital Share under the Settlement does not alter the ability to pay the expenses out of the income of the Marital Share); thirdly, any charge of post-agreement expenses to the Marital Share must be read in conjunction with the offsetting credits to the Marital Share for post-agreement income; and fourthly, the expenses in question are, by the terms of the Second and Final Settlement Agreement, limited to pre-segregation expenses which, for the most part, have already been deducted on the Form 706.

Respondent asserts that a reduction is necessary whether or not obligations are paid out of corpus.

(iii) What portion of the amount allocated to the spouse under the Second and Final settlement Agreement represents the portion of income earned by the marital interest during estate administration?

Petitioner asserts that the income element of the amounts passing to the marital share consists of the actual income previously distributed to Mrs. Hubert (addressed in Paragraph 10 a.(1)(B) of the Second and Final Settlement Agreement) plus the gap income addressed in Paragraph 10 a.(2). Petitioner further asserts that the Respondent's argument is the "discount theory" which Petitioner believes has been conceded and (as described in greater detail in support of Petitioner's Motion for Partial Summary Judgment) and has never been adopted by Congress in the estate tax area nor applied by Georgia law (specifically Official Code of Georgia Annotated § 53-2-97) to a will dispute.

Respondent asserts that the marital gift is a general bequest under O.C.G.A. § 53-2-97, entitled to 7% simple interest per year beginning one year after the date of death.

b. *Charitable Issues.*

(i) Whether Petitioner's charitable deduction is equal to the residue of the Estate as of the date of death less the portion of the residue representing corpus passing to the Marital Share pursuant to Paragraph 10 of the Second and Final Settlement Agreement.

Petitioner asserts that, under the Second and Final Settlement Agreement, any residuary corpus that does not go to the Marital Share necessarily goes to the Charitable Share. Petitioner further asserts that a finding in its favor on this issue renders all the following charitable issues moot except for issue (vi).

Respondent asserts that the amount remaining after deducting the Marital Share must be further reduced by post-agreement administrative expenses and implicit income computed from June 2, 1987 through October 10, 1990, and the Charitable Share of Estate taxes and interest; pursuant to the Second and Final Settlement Agreement.

(ii) Whether petitioner's charitable deduction is limited to the lesser of: (1) the amount passing to the charity under the 1982 Will and three codicils or (2) the amount actually passing to the charity.

Petitioner asserts that this is the same issue as raised by Respondent as the first issue under the Marital Issues, and Petitioner's contentions are generally the same.

Respondent asserts that there is a limitation.

(iii) Whether the amount of residuary corpus passing to the Charitable Share (pursuant to the 1982 Will and Codicils, as modified by the Second and Final Settlement Agreement) must be reduced by obligations charged to the Charitable Share, without regard to (a) whether the Estate charged those expenses to income on the Forms 1041 and (b) whether there are offsetting income adjustments under the Settlement.

Petitioner asserts that this is the same issue as raised by Respondent as the second issue under the Marital Issues and Petitioner's contentions are generally the same.

Respondent asserts that a reduction is necessary whether or not obligations are paid out of corpus.

(iv) What portion of the charitable share provided for under the Second and Final Settlement Agreement represents the portion of income earned by that share during estate administration.

Petitioner asserts that such determination of income is not necessary or proper because under the Second and Final Settlement Agreement, Petitioner is entitled to a charitable deduction for all of the date of death residuary corpus that does not pass to the Marital Share. In all events actual income must prevail over hypothetical income.

Respondent asserts that income earned by the charitable share during estate administration is a post death accretion to the value of the charitable gift, and is not deductible on the estate tax return. Respondent used seven percent (7%) in his calculation.

(v) What was the fair market value of the charitable residue on the date of agreement.

Petitioner asserts that this issue is legally irrelevant because under the Second and Final Settlement Agreement, Petitioner is entitled to a charitable deduction for all of the date of death residuary corpus that does not pass to the Marital Share. In all events, the C&S value is the proper value.

Respondent disagrees.

(vi) Whether the bequests pursuant to Item VII of the 1982 Will qualify for the charitable deduction.

Petitioner asserts that the provision is charitable in nature and Respondent asserts that part of the provision inures to the personal benefit of the missionaries named.

c. *Taxes and Interest.*

(i) Whether the charitable and marital deductions are reduced by additional Federal estate taxes and interest on Federal estate taxes.

Petitioner asserts that there are no additional Federal estate taxes due and that in any event, this Court has dealt with the effect of interest on estate tax deficiencies in *Estate of Richardson v. Commissioner*, 89 T.C. 1193 (1987); and *Estate of Street v. Commissioner*, T.C. Memo. 1988-553.

Respondent asserts that the marital and charitable deductions must be reduced by additional estate taxes and interest.

Petitioner reserves the right to argue that Respondent bears the burden of proof with respect to the above issues. Respondent does not object to Petitioner claiming marital and charitable deductions in the amounts provided by the Second and Final Settlement Agreement (modifying the 1982 Will and three Codicils) subject to the limitations noted above.

2. Respondent does not dispute that Petitioner is entitled to a marital deduction. Petitioner agrees that Mrs.

Hubert must be entitled for life to all income from her designated interest. The parties agree that some portion of the funds and property passing to or for the benefit of Mrs. Hubert represents yearly income beginning one year atfer the date of death of the decedent. Petitioner agrees that a portion of the funds and property passing to or for the benefit of Mrs. Hubert represents yearly income beginning no later than one year after the date of death of decedent. Further, Petitioner contends that this income consists of the income distributed to Mrs. Hubert and the Marital Share in the aggregate amount of $1,918,979 ($1,219,603 plus $699,376) and addressed in Paragraph 10 a.(1), a.(2), and d. of the Second and Final Settlement Agreement. The parties further agree that the property passing from the Estate to Mrs. Hubert, the GPA Trust, and the QTIP Trust is not non-deductible terminable interest property as defined in Code Section 2056(b). As to the four properties in the QTIP Trusts, the parties agree that the QTIP election made by the Estate on the Federal Estate Tax Return (Form 706) was made properly.

3. The parties also agree that the interest passing to the charitable trust ("to feed starving people in the world, for treating the sick who are poor and starving, and to give Bibles to those who need to know Jesus Christ") addressed in Paragraph 8 of the Second and Final Settlement Agreement was exclusively for charitable purposes.

4. Petitioner does not dispute adjustment (a) in the Notice to the effect that the adjusted taxable gifts reported on the Federal Estate Tax Return does not include taxable gifts in the amount of $9,202 reported for the period ending December 31, 1980.

5. With respect to adjustment (b) in the Notice, the parties agree that the debts of the decedent are overstated in the Federal Estate Tax Return as a result of a duplication in the amount of $344,959. The parties agree that

the debts of decedent should be reduced accordingly and that the residuary estate and charitable contribution deduction shall be adjusted as necessary to reflect the overstatement of debts.

6. Respondent does not dispute that there have been delays in distributing the marital and charitable shares, which delays have been attributable to the inability of the fiduciaries to distribute the Estate pending resolution of the will contest and the tax controversy.

7. Further, Respondent does not dispute, for purposes of this proceeding, that the Second and Final Settlement Agreement is:

a. a good faith compromise,

b. of an arm's length *bona fide* will contest.

8. The parties agree that modification of the 1982 Will by the Second and Final Settlement Agreement is binding and dispositive of the federal estate tax treatment.

9. Petitioner intends to claim all available administrative expenses on the Federal Estate Tax Return, rather than the Federal Fiduciary Income Tax Returns, to the extent the claiming of such expenses would reduce the estate tax liability. Respondent reserves the right to examine the expenses Petitioner determines to claim on the Federal Estate Tax Return rather than the Fiduciary Income Tax Returns.

ABRAHAM N.M. SHASHY, JR.
Chief Counsel
Internal Revenue Service

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DATED: December 19, 1991

[Sent to Tax Court 12-6-93]

UNITED STATES TAX COURT

Docket No. 22333-90
JUDGE CLAPP

ESTATE OF OTIS C. HUBERT, DECEASED, CITIZENS & SOUTHERN TRUST COMPANY (GEORGIA) N.A., a national banking association, Temporary Administrator and Nominated Co-Executor, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

RESPONDENT'S COMPUTATION FOR ENTRY OF DECISION

The attached computation is submitted, on behalf of the respondent, in compliance with the Court's two opinions determining the issues in this case, together with a proposed decision and stipulation which are being lodged concurrently with said computation.

This computation is submitted without prejudice to respondent's right to contest the correctness of the decision entered herein by the Court.

DAVID L. JORDAN
Acting Chief Counsel
Internal Revenue Service

By: /s/ Willard N. Timm, Jr.
WILLARD N. TIMM, JR.
Assistant District Counsel
Tax Court No. TWO172
P. O. Box 901
Atlanta, Georgia 30370
Tel. No. (404) 331-6120

Of Counsel:

WILLIAM A. Goss
Regional Counsel
DEAN R. MORLEY
District Counsel

Without prejudice to the right of appeal, it is agreed that the attached computation is in accordance with the opinion of the Tax Court in the above-entitled case.

/s/ David D. Aughtry
DAVID D. AUGHTRY
Chamberlain, Hrdlicka, White
Williams & Martin
Tax Court No. AD0165
1400 Harris Tower
233 Peachtree Street, NE
Atlanta, Georgia 30303
Tel. No. (404) 659-1410

November 24, 1993
Date

COMPUTATION STATEMENT

In re: Estate of Otis C. Hubert
Deceased, Citizens & Southern
Trust Company (Georgia) N.A.
a national banking association,
Temporary Administrator and
Nominated Co-Executor
Docket No. 22333-90

Date of Death: June 2, 1986

Estate Tax

Tax Assessed and Paid		**$344,428.00**
Payment: September 9, 1987	**$344,428.00**	
Tax Liability:		**—0—**
Overpayment:		**$344,428.00**

I.R.C. §§ 6512(b) (3) (B) and 6511(b) (2)
Return filed September 9, 1987.
No claim filed.
Deficiency notice mailed August 31, 1990.

The details supporting the above computation are set forth on the attached pages.

In re: Estate of Otis C. Hubert, Deceased
C&S/Sovran Trust Company (Georgia),
N. A., A National Banking Association,
Co-Executor
Post Office Box 448
Atlanta, Georgia 30355

Docket No. 22333-90

Date of Death: June 2, 1986

Estate Tax

Tax assessed and paid		$344,428.00
Payment: September 9, 1987	$344,428.00	
Tax liability		None
Overpayment		$344,428.00

I.R.C. sections 6512(b) (3) (B) and 6511(b) (2)
Return filed September 9, 1987
No claim filed
Deficiency notice mailed August 31, 1990

The details supporting the above computation are set forth on the attached pages.

Dept of the Treasury—Internal Revenue Service

NAME: Estate of Otis C. Hubert

SSW: 252-05-1011

DATE OF DEATH: 02-Jun-86

Gross Estate-Per Return	30,263,421.00	
Adjustments-Per Attachment #1	0.00	
Gross Estate-As Corrected		30,263,421.00
Fixed Deductions-Per Return	2,773,203.00	
Adjustments-Per Attachment #1	26,796,269.00	
Fixed Deductions-As Corrected		29,569,472.00
Interest Ded - Per Attachment #1		0.00
Marital Ded - Per Attachment #2		200,747.00
Charitable Ded - Per Attachment #2		200,000.00
Taxable Estate-As Corrected		273,202.00
Adjusted Taxable Gifts		154,561.00
Taxable Estate Plus Adjusted Taxable Gifts		427,763.00
Gross Estate Tax		131,239.00
Less: Aggregate Gift Tax		7,481.00
Unified Credit		155,800.00
Net		(32,042.00)
Less: Gift Tax Cr		0.00
Less: Foreign Tax Cr		0.00
Less: CR for Tax on Prior Trans		0.00
Total Tax Liability		0.00
Tax-Per Return or as Previously Adjusted		344,428.00
Gross Deficiency (Overassessment)		(344,428.00)
Less: Add'l St Death Tax Cr - If Substantiated		0.00
Net Deficiency (Overassessment)		(344,428.00)

Estate of Otis C. Hubert
Date of Death: June 2, 1986

Statement
Schedule 2

Explanation of Adjustments

(a) In 101 T.C. No. 22 the Court held that the amount passing to the marital share is $13,353,572.00 in accordance with the stipulation of facts filed with the Tax Court. Accordingly, the taxable estate is decreased $13,353,572.00.

(b) In T. C. Memo. 1993-482 the Court held that the bequests to the subtrusts for missionary work of charitable organizations in the amount of $200,000.00 qualify for the charitable deduction. Accordingly, the taxable estate is decreased $200,000.00.

(c) In 101 T. C. No. 22 the Court held that the amount passing to the charitable share is $12,870,864.00 in accordance with the stipulation of facts filed with the Tax Court. Accordingly, the taxable estate is decreased $12,870,864.00.

(d) In accordance with the stipulation of facts filed by the parties, it is determined that claims against the estate in the amount of $371,833.00 are allowable as a deduction. Accordingly, the taxable estate is decreased $371,833.00.

Dept of the Treasury - Internal Revenue Service

ATTACHMENT #1

Estate of Otis C. Hubert
Adjustments to Gross Estate

# 1	_____	0.00
# 2	_____	0.00
# 3	_____	0.00
# 4	_____	0.00
# 5	_____	0.00
# 6	_____	0.00
# 7	_____	0.00
# 8	_____	0.00
# 9	_____	0.00
#10	_____	0.00
#11	_____	0.00
#12	_____	0.00
Total Adjustments		0.00

Adjustments to Fixed Deductions

# 1	Schedule M	13,353,572.00
# 2	Schedule O	12,870,864.00
# 3	Schedule O	200,000.00
# 4	Schedule J - Claims	371,833.00
# 5	_____	0.00
# 6	_____	0.00
# 7	_____	0.00
# 8	_____	0.00
# 9	_____	0.00
#10	_____	0.00
#11	_____	0.00
#12	_____	0.00
Total Adjustments		26,796,269.00

Dept of the Treasury - Internal Revenue Service

ATTACHMENT #2

Computation of Residue

Corrected Gross Estate		30,263,421.00
Less: Corrected Fixed Deductions		29,569,472.00
Interest Deduction		0.00
Fixed Marital Deduction		220,747.00
Fixed Charitable Deduction		200,000.00
Federal Estate Tax Times	0.00000000%	0.00
State Death Tax Pd Times	0.00000000%	0.00
Other Residue Reductions		4,808,000.00
Corrected Residue Amount		0.00

Form 3623 | STATEMENT OF ACCOUNT | Schedule Number 1

Name of Taxpayer
Estate of Otis C. Hubert

Kind of Tax Income | Docket Number 223333-90 | In Reply Refer To CC:ATL-TL:JMK:GPM

Date of Death:	06-02-86							
Tax/ Addition to Tax	Tax							
	Date	Amount	Date	Amount	Date	Amount	Date	Amount
Revised Liability	XXXXXXXX	None	XXXXXXXX		XXXXXXXX		XXXXXXXX	
Assessment (tax on return)	XXXXXXXX	$596,551.47	XXXXXXXX		XXXXXXXX		XXXXXXXX	
Additional Assessments								
Overassessments	03-14-88	$252,123.47						
TOTAL ASSESSMENTS	XXXXXXXX	$344,428.00	XXXXXXXX	$0.00	XXXXXXXX	$0.00	XXXXXXXX	$0.00
Change in Assessment	XXXXXXXX	($344,428.00)	XXXXXXXX	$0.00	XXXXXXXX	$0.00	XXXXXXXX	$0.00
Revised Liability	XXXXXXXX	None	XXXXXXXX		XXXXXXXX	$0.00	XXXXXXXX	$0.00
Payments: Statutory Date								
Payment with return	09-09-87	$344,428.00						
Less Refunds or Credit								
TOTAL PAYMENTS	XXXXXXXX	$344,428.00	XXXXXXXX	$0.00	XXXXXXXX	$0.00	XXXXXXXX	$0.00
Balance Due (or overpayment)	XXXXXXXX	($344,428.00)	XXXXXXXX	$0.00	XXXXXXXX	$0.00	XXXXXXXX	$0.00

Date of Death	Internal Revenue Code Reference: Section	Year	Date Return Filed	Date Agreement Signed	Statute Extended To	Date Deficiency Notice Mailed	Date Claim Filed	Amount Of Claim
06-02-86	6512(b)(3)(B)	1986	09-09-87			08-31-90		
06-02-86	6511(b)(2)	1986	09-09-87			08-31-90		

UNITED STATES TAX COURT

Docket No. 22333-90
JUDGE CLAPP

ESTATE OF OTIS C. HUBERT, DECEASED, C&S SOVERAN TRUST COMPANY (GEORGIA) N.A., a national banking association, Co-Executor, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

DECISION

Pursuant to the opinions of the Court filed on October 19, 1993, and incorporating the facts recited in the respondent's computation, as well as the Stipulation, it is

ORDERED and DECIDED: That there is an overpayment in estate tax in the amount of $344,428.00, which amount was paid on September 9, 1987, and for which amount a claim could have been filed, under the provisions of I.R.C. §§ 6512(b)(3)(B) and 6511(b)(2), on August 31, 1990, the date of the mailing of the notice of deficiency.

(signed) Charles E. Clapp II
Judge

Entered: Dec. 14, 1993

* * * * *

Docket No. 22333-90

It is hereby stipulated that the Court may enter the foregoing decision in the above-entitled case in accordance with the opinions ofthe Court, the respondent's computation, and the stipulation submitted herewith.

DAVID L. JORDAN
Acting Chief Counsel
Internal Revenue Service

By: /s/ Dean R. Morley
DEAN R. MORLEY
District Counsel
Tax Court No. MD0394
P. O. Box 901
Atlanta, Georgia 30370
Tel. No. (404) 331-6120

Date: Dec. 3, 1993

/s/ David D. Aughtry
DAVID D. AUGHTRY
CHAMBERLAIN, HRDLICKA, WHITE
WILLIAM & MARTIN
Tax Court No. AD0165
1400 Harris Tower
233 Peachtree Street, NE
Atlanta, Georgia 30303
Tel. No. (404) 659-1410

Date: November 29, 1993

SUPREME COURT OF THE UNITED STATES

No. 95-1402

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

ESTATE OF OTIS C. HUBERT, DECEASED, ET AL.

ORDER ALLOWING CERTIORARI

Filed April 29, 1996

The petition herein for a writ of certiorari to the United States Court of Appeals for the Eleventh Circuit is granted.

April 29, 1996

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